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**DEPARTMENT OF STATE REVENUE**  
**Revenue Ruling #2010-09 ST**  
**January 14, 2011**

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**NOTICE:** Under [IC 4-22-7-7](#), this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**Sales and Use Tax – Real Estate Improvement Repair Contracts**

A company ("Taxpayer") is seeking an opinion as to (1) whether it has a duty to collect and remit Indiana sales tax on the monthly or annual fees it receives from its customers under its real estate improvement repair service contracts or (2) whether it has a duty to remit sales or use tax on the tangible personal property used to make repairs under such contracts.

**Authority:** [IC 6-2.5-2-1](#); [IC 6-2.5-3-2](#)(a); Sales Tax Information Bulletin #2; Sales Tax Information Bulletin #60

**STATEMENT OF FACTS**

Taxpayer provides the following facts regarding its request for a revenue ruling. Taxpayer contracts with customers to cover the costs for the repair of certain real estate improvements. In particular, Taxpayer explains that:

[F]or monthly or annual fees paid by the customer, [Taxpayer] agrees to cover all costs (both labor and parts) for the repair of certain real estate improvements, such as furnaces, water heaters, central air conditioners, heat pumps, and gas, water and electrical lines, etc. [Taxpayer's] customers can also sign up and pay a separately stated fee for repair services for certain household appliances, such as washers, dryers, stoves, etc.

[Taxpayer] allows the customer to choose the items that they want to cover and separate fees are charged accordingly.... [Taxpayer's] obligation to provide repair services under a [improvement or repair] contract is not transferable when the residence is sold; however, a purchaser of a residence may sign up under a new contract, as the new owner of the real estate....

Based on the foregoing facts, Taxpayer requests a ruling as to whether Taxpayer currently has a duty to collect and remit Indiana sales tax on the monthly or annual fees it receives from its customers under its contracts covering the costs of repairs to certain real estate improvements, i.e., furnaces, boilers, water heaters, heat pumps, central air conditioning units, inside water lines, inside electric lines, and inside gas lines, or whether Taxpayer has a duty to remit sales or use tax on the tangible personal property used to repair such items.

**DISCUSSION**

In general and pursuant to [IC 6-2.5-2-1](#), sales tax is imposed on retail transactions made in Indiana. Correspondingly, [IC 6-2.5-3-2](#)(a) imposes use tax on the storage, use or consumption of tangible personal property in Indiana, if the property was acquired in a retail transaction, regardless of the location of that transaction. The Department's Sales Tax Information Bulletin #60 explains, in pertinent part, the application of the foregoing provisions to construction contractors:

If a construction contractor purchases construction materials pursuant to a lump sum contract, the construction contractor pays either: (1) sales tax at the time the construction materials are purchased, or (2) use tax at the time the construction materials are incorporated into real property if the contractor purchased or acquired the construction materials exempt from sales tax and the owner of the real property could not have purchased the materials exempt from sales tax.

However, the Department's Sales Tax Information Bulletin #2 provides in relevant part:

Optional extended warranties and maintenance agreements may either be purchased alone, or purchased as an option with the sale of the covered product. Typically, the terms of these agreements provide assurances that any required service and parts will be provided in the event of a break down or malfunction of the covered product....

Optional warranties and maintenance agreements that contain the right to have property supplied in the event it is needed are subject to sales tax if there is a reasonable expectation that tangible personal property will be provided. Any parts or tangible personal property supplied pursuant to this type of agreement are not subject to sales or use tax. The supplier of the parts or property is not liable for the use tax on the parts or property because the supplier is using the material to fulfill the service called for by the terms of the warranty or maintenance agreement. A merchant that maintains an inventory of parts for resale and uses some of the parts in fulfilling the terms of the warranty or maintenance agreement is not required to self assess use tax on any parts so used.

**RULING**

Taxpayer currently has a duty to collect and remit Indiana sales tax on the monthly or annual fees it receives from its customers under its real estate improvement repair service contracts for each of the following items: furnaces, boilers, water heaters, heat pumps, central air conditioning units, inside water lines, inside electric lines,

and inside gas lines. Correspondingly, Taxpayer has no duty to remit sales or use tax on the tangible personal property used to repair each of the following items pursuant to said real estate improvement repair service contracts: furnaces, boilers, water heaters, heat pumps, central air conditioning units, inside water lines, inside electric lines, and inside gas lines.

**CAVEAT**

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

*Posted: 02/23/2011 by Legislative Services Agency*

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